

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 04-2601

Dana Thompson,

Appellant,

v.

T. C. Outlaw, Warden, FCI Waseca,

Appellee.

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Appeal from the United States
District Court for the
District of Minnesota.

[UNPUBLISHED]

Submitted: July 7, 2005
Filed: July 15, 2005

Before MELLOY, McMILLIAN, and GRUENDER, Circuit Judges.

PER CURIAM.

Federal inmate Dana Thompson appeals the district court's¹ dismissal of his 28 U.S.C. § 2241 petition. Following our de novo review, see United States v. Lurie, 207 F.3d 1075, 1076 (8th Cir. 2000), we agree with the district court that the federal Bureau of Prisons (BOP) properly concluded that Thompson was ineligible for early release based on his robbery conviction, and that he could not pursue his

¹The Honorable Donovan W. Frank, United States District Judge for the District of Minnesota, adopting the report and recommendations of the Honorable Jonathan G. Lebedoff, United States Magistrate Judge for the District of Minnesota.

Administrative Procedure Act-based claim because he failed to exhaust relevant administrative remedies. See Lopez v. Davis, 531 U.S. 230, 242-44 (2001) (holding that 28 C.F.R. § 550.58 is reasonable interpretation of 18 U.S.C. § 3621(e)(2)(B) both in taking account of preconviction conduct and in making categorical exclusions); United States v. Chappel, 208 F.3d 1069, 1069 (8th Cir. 2000) (per curiam) (affirming district court's dismissal--for failure to exhaust administrative remedies--of inmate's § 2241 petition seeking an order addressing right to pretrial credit against federal sentence); Zachar v. Tippy, 202 F.3d 1039, 1044 (8th Cir. 2000) (upholding denial of early release to inmate who completed Residential Drug Abuse Program because his earlier conviction in California for aggravated assault, which was listed in § 550.58, met the FBI's Uniform Crime Reporting definition); 28 C.F.R. § 550.58(a)(1)(iv) (as exercise of discretion vested in director of BOP, inmates who have prior felony or misdemeanor conviction for, inter alia, robbery are not eligible for early release).

Accordingly, we affirm under 8th Cir. Rule 47B.
